

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

LARRY VICKERY,)	
)	
Plaintiff,)	
)	
v.)	No. 2:20-cv-00566-JPH-MJD
)	
PEREZ, et al.)	
)	
Defendants.)	

ORDER SCREENING THE SECOND AMENDED COMPLAINT

Larry Vickery, by recruited counsel, has filed a second amended complaint alleging deliberate indifference to a serious medical need. Because Mr. Vickery is a prisoner, the Court must screen the second amended complaint. *See* 28 U.S.C. § 1915A(a).

I. SCREENING STANDARD

The Court must dismiss the complaint, or any portion of the complaint, if it is frivolous or malicious, fails to state a claim for relief, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915A(a)-(c). The Court applies the same standard for a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017). The complaint "must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). *Pro se* complaints are construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. *Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015) (internal quotations omitted).

II. THE SECOND AMENDED COMPLAINT

The second amended complaint makes the following allegations. Mr. Vickery has Type 1 diabetes, a serious medical need that is treated with regular injections of insulin. Mr. Vickery requires a type of insulin called Lantus because other forms of insulin cause him to suffer severe allergic reactions. Throughout his time at the Indiana Department of Correction ("IDOC"), Mr. Vickery has been denied Lantus and was forced to repeatedly take other forms of insulin to prove that he is allergic. As a result, he has suffered diabetic retinopathy and impaired vision, kidney problems and painful kidney stones, the calcification of his vas deferens, and a diabetic ulcer requiring the amputation of his left big toe.

Wexford of Indiana, LLC had a contract to provide medical services to the Indiana Department of Correction from April 2017 to June 30, 2021. Centurion Health of Indiana, LLC succeeded Wexford as IDOC's medical contractor beginning on July 1, 2021, through the present. Both companies have payment structures that incentivize them to deny or delay necessary medical care to save money. The companies' policies or practices resulted in the denial of Mr. Vickery's requests for Lantus. Centurion's policies or practices have resulted in the denial of Mr. Vickery's requests for diabetic shoes and a wheelchair following the amputation of his left big toe.

Dr. Michael Mitcheff was Wexford's Regional Medical Director during the time relevant to this lawsuit. In this position, he was the final decisionmaker and policymaker for inmate medication approvals. Although Dr. Mitcheff was aware of Mr. Vickery's serious medical need, he denied requests for him to receive Lantus as a treatment for his diabetes.

During Mr. Vickery's time at Putnamville Correctional Facility, the following medical professionals failed to provide him with necessary medical evaluations, care, and treatment; failed to intervene to help Mr. Vickery obtain Lantus for his diabetes; and caused his health to deteriorate:

Dr. Pablo Perez, Nurse Cheryl Petty, Nurse Carrie McGarr, Nurse Susan Moothery, Nurse Taylor Forquer, Nurse Kerrigan Feider, Nurse Jamie Gibbens, and Nurse Kari Pierce. Dr. Perez also failed to effectively treat a diabetic ulcer on Mr. Vickery's left big toe, which led to the toe's amputation.

During Mr. Vickery's time at New Castle Correctional Facility, the following medical professionals have failed to provide him with the medical evaluations, care, and treatment that he required and have caused his health to deteriorate: Dr. Erick Falconer and Dr. John Nwannunu. Dr. Nwannunu also failed to adequately treat Mr. Vickery for scabies and delayed treatment for an infected toe, and Dr. Falconer failed to provide him with any pain medication following the amputation of his left big toe.

The following IDOC defendants have failed to act within their authority to ensure that Mr. Vickery receives adequate care for his medical conditions: Robert Carter, Brian Smith, Mike Smith, Rachel Schilling, Chris Williams, Hannah Winningham, and Paul Southwick. Mr. Williams, Ms. Winningham, and Mr. Southwick also retaliated against Mr. Vickery for his use of the grievance process and / or for filing this lawsuit. Their retaliatory conduct has included the denials of his grievances, the denial of participation in an outpatient drug rehabilitation program, and threats of disciplinary proceedings, respectfully.

Mr. Vickery seeks declaratory and injunctive relief and compensatory and punitive damages.

III. DISCUSSION

Mr. Vickery's Eighth Amendment medical claims **shall proceed** against all defendants. His claims against Wexford and Centurion shall proceed under the theory set forth in *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978). His claims shall proceed against Dr. Mitcheff and Commissioner Carter in their individual and official capacities. His claims shall proceed against all other defendants in their individual capacities only.

Mr. Vickery's First Amendment retaliation claims **shall proceed** against Mr. Williams, Ms. Winningham, and Mr. Southwick in their individual capacities.

IV. CONCLUSION

Centurion, Dr. Nwannunu, Nurse Schilling, and Mr. Southwick have appeared in this action and answered the second amended complaint. Dkt. 133. Commissioner Carter, Brian Smith, Mike Smith, and Chris Williams have also appeared and answered the second amended complaint. Dkt. 136.

Wexford, Dr. Perez, Dr. Mitcheff, Nurse Moothery, Nurse Feider, Nurse Pierce, Nurse McGarr, Nurse Petty, Nurse Forquer, and Nurse Gibbens have appeared in this action. However, they have not yet answered the second amended complaint. They are ordered to do so **within 14 days of this Order**.

Dr. Falconer and Ms. Winningham have not yet appeared in this action. The **clerk is directed** pursuant to Fed. R. Civ. P. 4(c)(3) to issue process to these defendants in the manner specified by Rule 4(d). Process shall consist of the second amended complaint, dkt. [124], applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of service of Summons), and this Order.

The Court **requests** that defense counsel facilitate the filing of the return of service and answers from Dr. Falconer and Ms. Winningham.

The **clerk is directed** to change the names of the following defendants on the docket:

- "Dr. Perez" to "Dr. Pablo Perez";
- "Susan Moothery" to "Susan Smoothery";
- "Nurse Pierce" to "Kari Pierce"
- "Carter" to "Robert Carter."

SO ORDERED.

Date: 1/13/2022



James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

LARRY VICKERY
251617
NEW CASTLE - CF
NEW CASTLE CORRECTIONAL FACILITY - Inmate Mail/Parcels
1000 Van Nuys Road
NEW CASTLE, IN 47362

Douglass R. Bitner
KATZ KORIN CUNNINGHAM, P.C.
dbitner@kkclegal.com

James F. Bleeke
BLEEKE DILLON CRANDALL ATTORNEYS
jim@bleekedilloncrandall.com

Jeb Adam Crandall
BLEEKE DILLON CRANDALL ATTORNEYS
jeb@bleekedilloncrandall.com

Conner Ross Dickerson
INDIANA ATTORNEY GENERAL
conner.dickerson@atg.in.gov

Christopher Andrew Farrington
BLEEKE DILLON CRANDALL ATTORNEYS
drew@bleekedilloncrandall.com

Rachel D. Johnson
KATZ KORIN CUNNINGHAM, P.C.
rjohnson@kkclegal.com

Molly Michelle McCann
INDIANA ATTORNEY GENERAL
molly.mccann@atg.in.gov

Pamela G. Schneeman
STEPHENSON MOROW & SEMLER
pschneeman@stephlaw.com

Dr. Erick Falconer
New Castle Correctional Facility – Medical Staff
1000 Van Nuys Road
New Castle, IN 47362

Hannah Winningham
New Castle Correctional Facility – Medical Staff
1000 Van Nuys Road
New Castle, IN 47362